
SUBSTITUTE HOUSE BILL 2392

State of Washington

59th Legislature

2006 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Dickerson, Appleton, Moeller, Hasegawa, Darneille, Conway, Roberts, Kenney, Kagi, Flannigan, Cody and Green)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to family and medical leave; amending RCW 49.78.010
2 and 49.78.020; adding new sections to chapter 49.78 RCW; creating a new
3 section; repealing RCW 49.78.005, 49.78.030, 49.78.040, 49.78.050,
4 49.78.060, 49.78.070, 49.78.080, 49.78.100, 49.78.110, 49.78.120,
5 49.78.130, 49.78.140, 49.78.150, 49.78.160, 49.78.170, 49.78.180,
6 49.78.190, and 49.78.200; and prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 49.78.010 and 1989 1st ex.s. c 11 s 1 are each amended
9 to read as follows:

10 The legislature finds that the demands of the workplace and of
11 families need to be balanced to promote family stability and economic
12 security. ~~((Changes in))~~ Workplace leave policies are desirable to
13 accommodate changes in the work force such as rising numbers of dual-
14 career couples ~~((and))~~, working single parents, and an aging
15 population. In addition, given the mobility of American society, many
16 people no longer have available community or family support networks
17 and therefore need additional flexibility in the workplace. The
18 legislature declares it to be in the public interest to provide
19 reasonable ~~((family leave upon the birth or adoption of a child and to~~

1 ~~care for a child under eighteen years old with a terminal~~) leave for
2 medical reasons, for the birth or placement of a child, and for the
3 care of a family member who has a serious health condition.

4 **Sec. 2.** RCW 49.78.020 and 1996 c 178 s 14 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Child" means a biological ~~((or))~~, adopted, or foster child,
9 ~~((or))~~ a stepchild, ((living with the employee)) a legal ward, or a
10 child of a person standing in loco parentis, who is: (a) Under
11 eighteen years of age; or (b) eighteen years of age or older and
12 incapable of self-care because of a mental or physical disability.

13 (2) "Department" means the department of labor and industries.

14 (3) "Director" means the director of the department.

15 (4)(a) "Employee" means a person ((other than an independent
16 contractor employed by an employer on a continuous basis for the
17 previous fifty two weeks for at least thirty five hours per week)) who
18 has been employed: (i) For at least twelve months by the employer with
19 respect to whom leave is requested under section 3 of this act; and
20 (ii) for at least one thousand two hundred fifty hours of service with
21 the employer during the previous twelve-month period.

22 (b) "Employee" does not mean a person who is employed at a worksite
23 at which the employer as defined in (a) of this subsection employs less
24 than fifty employees if the total number of employees employed by that
25 employer within seventy-five miles of that worksite is less than fifty.

26 ~~((4))~~ (5) "Employer" means:

27 (a) Any person, firm, corporation, partnership, business trust,
28 legal representative, or other business entity which engages in any
29 business, industry, profession, or activity in this state and
30 ~~((includes any unit of local government including, but not limited to,~~
31 ~~a county, city, town, municipal corporation, quasi municipal~~
32 ~~corporation, or political subdivision, which (i) employed a daily~~
33 ~~average of one hundred or more employees during the last calendar~~
34 ~~quarter at the place where the employee requesting leave reports for~~
35 ~~work, or (ii) employed a daily average of one hundred or more employees~~
36 ~~during the last calendar quarter within a twenty mile radius of the~~
37 ~~place where the employee requesting leave reports for work, where the~~

1 ~~employer maintains a central hiring location and customarily transfers~~
2 ~~employees among workplaces; and))~~ which employs fifty or more employees
3 for each working day during each of twenty or more calendar workweeks
4 in the current or preceding year. "Employer" includes: (i) Any person
5 who acts, directly or indirectly, in the interest of an employer to any
6 of the employees of such employer; and (ii) any successor in interest
7 of an employer;

8 (b) The state, state institutions, and state agencies; and

9 (c) Any unit of local government including, but not limited to, a
10 county, city, town, municipal corporation, quasi-municipal corporation,
11 or political subdivision.

12 ~~((5) "Family leave" means leave from employment to care for a~~
13 ~~newborn or newly adopted child under the age of six or a child under~~
14 ~~eighteen years old with a terminal health condition, as provided in RCW~~
15 ~~49.78.030.))~~

16 (6) "Employment benefits" means all benefits provided or made
17 available to employees by an employer, including group life insurance,
18 health insurance, disability insurance, sick leave, annual leave,
19 educational benefits, and pensions except benefits that are provided by
20 a practice or written policy of an employer or through an employee
21 benefit plan as defined in 29 U.S.C. Sec. 1002(3).

22 (7) "Family member" means a child, parent, or spouse of an
23 employee.

24 (8) "Health care provider" means: (a) A person licensed as a
25 physician under chapter 18.71 RCW or an osteopathic physician and
26 surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced
27 registered nurse practitioner under chapter 18.79 RCW; or (c) any other
28 person determined by the director to be capable of providing health
29 care services.

30 ~~((7))~~ (9) "Intermittent leave" is leave taken in separate blocks
31 of time due to a single qualifying reason.

32 (10) "Leave for a family member's serious health condition" means
33 leave as described in section 3(1)(c) of this act.

34 (11) "Leave for the birth or placement of a child" means leave as
35 described in section 3(1) (a) or (b) of this act.

36 (12) "Leave for the employee's serious health condition" means
37 leave as described in section 3(1)(d) of this act.

1 ~~(13)~~ "Parent" means ~~((a biological or adoptive parent, or a~~
2 ~~stepparent))~~ the biological or adoptive parent of an employee or an
3 individual who stood in loco parentis to an employee when the employee
4 was a child.

5 ~~((8))~~ (14) "Period of incapacity" means an inability to work,
6 attend school, or perform other regular daily activities because of the
7 serious health condition, treatment of that condition or recovery from
8 it, or subsequent treatment in connection with such inpatient care.

9 (15) "Reduced leave schedule" means ((leave scheduled for fewer
10 than an employee's usual number of hours or days per workweek)) a leave
11 schedule that reduces the usual number of hours per workweek, or hours
12 per workday, of an employee.

13 ~~((9) "Terminal health condition" means a condition caused by~~
14 ~~injury, disease, or illness, that, within reasonable medical judgment,~~
15 ~~is incurable and will produce death within the period of leave to which~~
16 ~~the employee is entitled.))~~

17 (16)(a) "Serious health condition" means an illness, injury,
18 impairment, or physical or mental condition that involves:

19 (i) Inpatient care in a hospital, hospice, or residential medical
20 care facility, including any period of incapacity; or

21 (ii) Continuing treatment by a health care provider. A serious
22 health condition involving continuing treatment by a health care
23 provider includes any one or more of the following:

24 (A) A period of incapacity of more than three consecutive calendar
25 days, and any subsequent treatment or period of incapacity relating to
26 the same condition, that also involves:

27 (I) Treatment two or more times by a health care provider, by a
28 nurse or physician's assistant under direct supervision of a health
29 care provider, or by a provider of health care services under orders
30 of, or on referral by, a health care provider; or

31 (II) Treatment by a health care provider on at least one occasion
32 which results in a regimen of continuing treatment under the
33 supervision of the health care provider;

34 (B) Any period of incapacity due to pregnancy, or for prenatal
35 care;

36 (C) Any period of incapacity or treatment for such incapacity due
37 to a chronic serious health condition. A chronic serious health
38 condition is one which:

1 (I) Requires periodic visits for treatment by a health care
2 provider, or by a nurse or physician's assistant under direct
3 supervision of a health care provider;

4 (II) Continues over an extended period of time, including recurring
5 episodes of a single underlying condition; and

6 (III) May cause episodic rather than a continuing period of
7 incapacity;

8 (D) A period of incapacity which is permanent or long-term due to
9 a condition for which treatment may not be effective. The employee or
10 family member must be under the continuing supervision of, but need not
11 be receiving active treatment by, a health care provider; or

12 (E) Any period of absence to receive multiple treatments, including
13 any period of recovery from the treatments, by a health care provider
14 or by a provider of health care services under orders of, or on
15 referral by, a health care provider, either for restorative surgery
16 after an accident or other injury, or for a condition that would likely
17 result in a period of incapacity of more than three consecutive
18 calendar days in the absence of medical intervention or treatment, such
19 as cancer, severe arthritis, or kidney disease.

20 (b) Treatment for purposes of (a) of this subsection includes, but
21 is not limited to, examinations to determine if a serious health
22 condition exists and evaluations of the condition. Treatment does not
23 include routine physical examinations, eye examinations, or dental
24 examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of
25 continuing treatment includes, but is not limited to, a course of
26 prescription medication or therapy requiring special equipment to
27 resolve or alleviate the health condition. A regimen of continuing
28 treatment that includes taking over-the-counter medications, such as
29 aspirin, antihistamines, or salves, or bed-rest, drinking fluids,
30 exercise, and other similar activities that can be initiated without a
31 visit to a health care provider, is not, by itself, sufficient to
32 constitute a regimen of continuing treatment for purposes of this
33 chapter.

34 (c) Conditions for which cosmetic treatments are administered are
35 not "serious health conditions" unless inpatient hospital care is
36 required or unless complications develop. Unless complications arise,
37 the common cold, the flu, ear aches, upset stomach, minor ulcers,
38 headaches other than migraine, routine dental or orthodontia problems,

1 and periodontal disease are examples of conditions that do not meet the
2 definition of a "serious health condition" and do not qualify for leave
3 under this chapter. Restorative dental or plastic surgery after an
4 injury or removal of cancerous growths are serious health conditions
5 provided all the other conditions of this section are met. Mental
6 illness resulting from stress or allergies may be serious health
7 conditions provided all the other conditions of this section are met.

8 (d) Substance abuse may be a serious health condition if the
9 conditions of this section are met. However, leave may only be taken
10 for treatment for substance abuse by a health care provider or by a
11 provider of health care services upon referral by a health care
12 provider. Absence from work because of the employee's use of the
13 substance, rather than for treatment, does not qualify for leave under
14 this chapter.

15 (e) Absences attributable to incapacity under (a)(ii)(B) or (C) of
16 this subsection qualify for leave under this chapter even though the
17 employee or the immediate family member does not receive treatment from
18 a health care provider during the absence, and even if the absence does
19 not last more than three days.

20 (17) "Spouse" means a husband or wife, as the case may be.

21 NEW SECTION. Sec. 3. A new section is added to chapter 49.78 RCW
22 to read as follows:

23 ENTITLEMENT TO LEAVE. (1) Subject to section 7 of this act, an
24 employee is entitled to a total of twelve workweeks of leave during any
25 twelve-month period for one or more of the following:

26 (a) Because of the birth of a child of the employee and in order to
27 care for the child;

28 (b) Because of the placement of a child with the employee for
29 adoption or foster care;

30 (c) In order to care for a family member of the employee, if the
31 family member has a serious health condition; or

32 (d) Because of a serious health condition that makes the employee
33 unable to perform the functions of the position of the employee.

34 (2) The entitlement to leave for the birth or placement of a child
35 expires at the end of the twelve-month period beginning on the date of
36 such birth or placement.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.78 RCW
2 to read as follows:

3 LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. (1)(a)
4 When leave is taken after the birth or placement of a child for
5 adoption or foster care, an employee may take leave intermittently or
6 on a reduced leave schedule with the employer's agreement. The
7 employer's agreement is not required, however, for leave during which
8 the employee has a serious health condition in connection with the
9 birth of a child or if the newborn child has a serious health
10 condition.

11 (b) Leave may be taken intermittently or on a reduced leave
12 schedule when medically necessary for medical treatment of a serious
13 health condition by or under the supervision of a health care provider,
14 or for recovery from treatment or recovery from a serious health
15 condition. It may also be taken to provide care or psychological
16 comfort to an immediate family member with a serious health condition.

17 (i) Intermittent leave may be taken for a serious health condition
18 that requires treatment by a health care provider periodically, rather
19 than for one continuous period of time, and may include leave of
20 periods from an hour or more to several weeks.

21 (ii) Intermittent or reduced schedule leave may be taken for
22 absences where the employee or family member is incapacitated or unable
23 to perform the essential functions of the position because of a chronic
24 serious health condition even if he or she does not receive treatment
25 by a health care provider.

26 (c) There is no limit on the size of an increment of leave when an
27 employee takes intermittent leave or leave on a reduced leave schedule.
28 However, an employer may limit leave increments to the shortest period
29 of time that the employer's payroll system uses to account for absences
30 or use of leave, provided it is one hour or less.

31 (d) The taking of leave intermittently or on a reduced leave
32 schedule under this section may not result in a reduction in the total
33 amount of leave to which the employee is entitled under section 3 of
34 this act beyond the amount of leave actually taken.

35 (2) If an employee requests intermittent leave, or leave on a
36 reduced leave schedule, for a family member's serious health condition
37 or the employee's serious health condition when the condition is
38 foreseeable based on planned medical treatment, the employer may

1 require such employee to transfer temporarily to an available
2 alternative position offered by the employer for which the employee is
3 qualified and that:

- 4 (a) Has equivalent pay and benefits; and
- 5 (b) Better accommodates recurring periods of leave than the regular
6 employment position of the employee.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 49.78 RCW
8 to read as follows:

9 UNPAID LEAVE PERMITTED--RELATIONSHIP TO PAID LEAVE. (1) Except as
10 provided in subsection (2) of this section, leave granted under section
11 3 of this act may consist of unpaid leave.

12 (2) If an employer provides paid leave for fewer than twelve
13 workweeks, the additional weeks of leave necessary to attain the twelve
14 workweeks of leave required under this chapter may be provided without
15 compensation.

16 NEW SECTION. **Sec. 6.** A new section is added to chapter 49.78 RCW
17 to read as follows:

18 FORESEEABLE LEAVE. (1) If the necessity for leave for the birth or
19 placement of a child is foreseeable based on an expected birth or
20 placement, the employee shall provide the employer with not less than
21 thirty days' notice, before the date the leave is to begin, of the
22 employee's intention to take leave for the birth or placement of a
23 child, except that if the date of the birth or placement requires leave
24 to begin in less than thirty days, the employee shall provide such
25 notice as is practicable.

26 (2) If the necessity for leave for a family member's serious health
27 condition or the employee's serious health condition is foreseeable
28 based on planned medical treatment, the employee:

29 (a) Must make a reasonable effort to schedule the treatment so as
30 not to disrupt unduly the operations of the employer, subject to the
31 approval of the health care provider of the employee or the health care
32 provider of the family member, as appropriate; and

33 (b) Must provide the employer with not less than thirty days'
34 notice, before the date the leave is to begin, of the employee's
35 intention to take leave for a family member's serious health condition

1 or the employee's serious health condition, except that if the date of
2 the treatment requires leave to begin in less than thirty days, the
3 employee must provide such notice as is practicable.

4 NEW SECTION. **Sec. 7.** A new section is added to chapter 49.78 RCW
5 to read as follows:

6 SPOUSES EMPLOYED BY SAME EMPLOYER. If spouses entitled to leave
7 under this chapter are employed by the same employer, the aggregate
8 number of workweeks of leave to which both may be entitled may be
9 limited to twelve workweeks during any twelve-month period, if such
10 leave is taken: (1) For the birth or placement of a child; or (2) for
11 a parent's serious health condition.

12 NEW SECTION. **Sec. 8.** A new section is added to chapter 49.78 RCW
13 to read as follows:

14 CERTIFICATION. (1) An employer may require that a request for
15 leave for a family member's serious health condition or the employee's
16 serious health condition be supported by a certification issued by the
17 health care provider of the employee or of the family member, as
18 appropriate. The employee must provide, in a timely manner, a copy of
19 the certification to the employer.

20 (2) Certification provided under subsection (1) of this section is
21 sufficient if it states:

22 (a) The date on which the serious health condition commenced;

23 (b) The probable duration of the condition;

24 (c) The appropriate medical facts within the knowledge of the
25 health care provider regarding the condition;

26 (d)(i) For purposes of leave for a family member's serious health
27 condition, a statement that the employee is needed to care for the
28 family member and an estimate of the amount of time that such employee
29 is needed to care for the family member; and

30 (ii) For purposes of leave for the employee's serious health
31 condition, a statement that the employee is unable to perform the
32 functions of the position of the employee;

33 (e) In the case of certification for intermittent leave, or leave
34 on a reduced leave schedule, for planned medical treatment, the dates
35 on which the treatment is expected to be given and the duration of the
36 treatment;

1 (f) In the case of certification for intermittent leave, or leave
2 on a reduced leave schedule, for the employee's serious health
3 condition, a statement of the medical necessity for the intermittent
4 leave or leave on a reduced leave schedule, and the expected duration
5 of the intermittent leave or reduced leave schedule; and

6 (g) In the case of certification for intermittent leave, or leave
7 on a reduced leave schedule, for a family member's serious health
8 condition, a statement that the employee's intermittent leave or leave
9 on a reduced leave schedule is necessary for the care of the family
10 member who has a serious health condition, or will assist in their
11 recovery, and the expected duration and schedule of the intermittent
12 leave or reduced leave schedule.

13 (3) If the employer has reason to doubt the validity of the
14 certification provided under subsection (1) of this section for leave
15 for a family member's serious health condition or the employee's
16 serious health condition, the employer may require, at the expense of
17 the employer, that the employee obtain the opinion of a second health
18 care provider designated or approved by the employer concerning any
19 information certified under subsection (2) of this section for the
20 leave. The second health care provider may not be employed on a
21 regular basis by the employer.

22 (4) If the second opinion described in subsection (3) of this
23 section differs from the opinion in the original certification provided
24 under subsection (1) of this section, the employer may require, at the
25 expense of the employer, that the employee obtain the opinion of a
26 third health care provider designated or approved jointly by the
27 employer and the employee concerning the information certified under
28 subsection (2) of this section. The opinion of the third health care
29 provider concerning the information certified under subsection (2) of
30 this section is considered to be final and is binding on the employer
31 and the employee.

32 (5) The employer may require that the employee obtain subsequent
33 recertifications on a reasonable basis.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 49.78 RCW
35 to read as follows:

36 **EMPLOYMENT PROTECTION.** (1)(a) Except as provided in (b) of this

1 subsection, any employee who takes leave under section 3 of this act
2 for the intended purpose of the leave is entitled, on return from the
3 leave:

4 (i) To be restored by the employer to the position of employment
5 held by the employee when the leave commenced; or

6 (ii) To be restored to an equivalent position with equivalent
7 employment benefits, pay, and other terms and conditions of employment
8 at a workplace within twenty miles of the employee's workplace when
9 leave commenced.

10 (b) The taking of leave under section 3 of this act may not result
11 in the loss of any employment benefits accrued before the date on which
12 the leave commenced.

13 (c) Nothing in this section entitles any restored employee to:

14 (i) The accrual of any seniority or employment benefits during any
15 period of leave; or

16 (ii) Any right, benefit, or position of employment other than any
17 right, benefit, or position to which the employee would have been
18 entitled had the employee not taken the leave.

19 (d) As a condition of restoration under (a) of this subsection for
20 an employee who has taken leave for the employee's serious health
21 condition, the employer may have a uniformly applied practice or policy
22 that requires each such employee to receive certification from the
23 health care provider of the employee that the employee is able to
24 resume work, except that nothing in this subsection (1)(d) supersedes
25 a valid local law or a collective bargaining agreement that governs the
26 return to work of such employees.

27 (e) Nothing in this subsection (1) prohibits an employer from
28 requiring an employee on leave to report periodically to the employer
29 on the status and intention of the employee to return to work.

30 (2) An employer may deny restoration under subsection (1) of this
31 section to any salaried employee who is among the highest paid ten
32 percent of the employees employed by the employer within seventy-five
33 miles of the facility at which the employee is employed if:

34 (a) Denial is necessary to prevent substantial and grievous
35 economic injury to the operations of the employer;

36 (b) The employer notifies the employee of the intent of the
37 employer to deny restoration on such basis at the time the employer
38 determines that the injury would occur; and

1 (c) The leave has commenced and the employee elects not to return
2 to employment after receiving the notice.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 49.78 RCW
4 to read as follows:

5 EMPLOYMENT BENEFITS. During any period of leave taken under
6 section 3 of this act, if the employee is not eligible for any employer
7 contribution to medical or dental benefits under an applicable
8 collective bargaining agreement or employer policy during any period of
9 leave, an employer shall allow the employee to continue, at the
10 employee's expense, medical or dental insurance coverage, including any
11 spouse and dependent coverage, in accordance with state or federal law.
12 The premium to be paid by the employee shall not exceed one hundred two
13 percent of the applicable premium for the leave period.

14 NEW SECTION. **Sec. 11.** A new section is added to chapter 49.78 RCW
15 to read as follows:

16 PROHIBITED ACTS. (1) It is unlawful for any employer to:

17 (a) Interfere with, restrain, or deny the exercise of, or the
18 attempt to exercise, any right provided under this chapter; or

19 (b) Discharge or in any other manner discriminate against any
20 individual for opposing any practice made unlawful by this chapter.

21 (2) It is unlawful for any person to discharge or in any other
22 manner discriminate against any individual because the individual has:

23 (a) Filed any charge, or has instituted or caused to be instituted
24 any proceeding, under or related to this chapter;

25 (b) Given, or is about to give, any information in connection with
26 any inquiry or proceeding relating to any right provided under this
27 chapter; or

28 (c) Testified, or is about to testify, in any inquiry or proceeding
29 relating to any right provided under this chapter.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 49.78 RCW
31 to read as follows:

32 Upon complaint by an employee, the director shall investigate to
33 determine if there has been compliance with this chapter and the rules
34 adopted under this chapter. If the investigation indicates that a
35 violation may have occurred, a hearing must be held in accordance with

1 chapter 34.05 RCW. The director must issue a written determination
2 including his or her findings after the hearing. A judicial appeal
3 from the director's determination may be taken in accordance with
4 chapter 34.05 RCW, with the prevailing party entitled to recover
5 reasonable costs and attorneys' fees.

6 NEW SECTION. **Sec. 13.** A new section is added to chapter 49.78 RCW
7 to read as follows:

8 An employer who is found, in accordance with section 12 of this
9 act, to have violated a requirement of this chapter and the rules
10 adopted under this chapter, is subject to a civil penalty of not less
11 than one thousand dollars for each violation. Civil penalties must be
12 collected by the department and deposited into the family and medical
13 leave enforcement account.

14 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.78 RCW
15 to read as follows:

16 CIVIL ACTION BY EMPLOYEES. (1) Any employer who violates section
17 11 of this act is liable:

18 (a) For damages equal to:

19 (i) The amount of:

20 (A) Any wages, salary, employment benefits, or other compensation
21 denied or lost to such employee by reason of the violation; or

22 (B) In a case in which wages, salary, employment benefits, or other
23 compensation have not been denied or lost to the employee, any actual
24 monetary losses sustained by the employee as a direct result of the
25 violation, such as the cost of providing care, up to a sum equal to
26 twelve weeks of wages or salary for the employee;

27 (ii) The interest on the amount described in (a)(i) of this
28 subsection calculated at the prevailing rate; and

29 (iii) An additional amount as liquidated damages equal to the sum
30 of the amount described in (a)(i) of this subsection and the interest
31 described in (a)(ii) of this subsection, except that if an employer who
32 has violated section 11 of this act proves to the satisfaction of the
33 court that the act or omission which violated section 11 of this act
34 was in good faith and that the employer had reasonable grounds for
35 believing that the act or omission was not a violation of section 11 of

1 this act, the court may, in the discretion of the court, reduce the
2 amount of the liability to the amount and interest determined under
3 (a)(i) and (ii) of this subsection, respectively; and

4 (b) For such equitable relief as may be appropriate, including
5 employment, reinstatement, and promotion.

6 (2) An action to recover the damages or equitable relief prescribed
7 in subsection (1) of this section may be maintained against any
8 employer in any court of competent jurisdiction by any one or more
9 employees for and on behalf of:

10 (a) The employees; or

11 (b) The employees and other employees similarly situated.

12 (3) The court in such an action shall, in addition to any judgment
13 awarded to the plaintiff, allow reasonable attorneys' fees, reasonable
14 expert witness fees, and other costs of the action to be paid by the
15 defendant.

16 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.78 RCW
17 to read as follows:

18 NOTICE. Each employer shall post and keep posted, in conspicuous
19 places on the premises of the employer where notices to employees and
20 applicants for employment are customarily posted, a notice, to be
21 prepared or approved by the director, setting forth excerpts from, or
22 summaries of, the pertinent provisions of this chapter and information
23 pertaining to the filing of a charge. Any employer that willfully
24 violates this section may be subject to a civil penalty of not more
25 than one hundred dollars for each separate offense. Any penalties
26 collected by the department under the section shall be deposited into
27 the family and medical leave enforcement account.

28 NEW SECTION. **Sec. 16.** A new section is added to chapter 49.78 RCW
29 to read as follows:

30 FAMILY AND MEDICAL LEAVE ENFORCEMENT ACCOUNT. The family and
31 medical leave enforcement account is created in the custody of the
32 state treasurer. Any penalties collected under section 13 or 15 of
33 this act shall be deposited into the account and shall be used only for
34 the purposes of administering and enforcing this chapter. Only the
35 director or the director's designee may authorize expenditures from the

1 account. The account is subject to allotment procedures under chapter
2 43.88 RCW, but an appropriation is not required for expenditures.

3 NEW SECTION. **Sec. 17.** A new section is added to chapter 49.78 RCW
4 to read as follows:

5 EFFECT ON OTHER LAWS. Nothing in this chapter shall be construed:
6 (1) To modify or affect any state or local law prohibiting
7 discrimination on the basis of race, religion, color, national origin,
8 sex, age, or disability; or (2) to supersede any provision of any local
9 law that provides greater family or medical leave rights than the
10 rights established under this chapter.

11 NEW SECTION. **Sec. 18.** A new section is added to chapter 49.78 RCW
12 to read as follows:

13 EFFECT ON EXISTING EMPLOYMENT BENEFITS. Nothing in this chapter
14 diminishes the obligation of an employer to comply with any collective
15 bargaining agreement or any employment benefit program or plan that
16 provides greater family or medical leave rights to employees than the
17 rights established under this chapter. The rights established for
18 employees under this chapter may not be diminished by any collective
19 bargaining agreement or any employment benefit program or plan.

20 NEW SECTION. **Sec. 19.** A new section is added to chapter 49.78 RCW
21 to read as follows:

22 ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES. Nothing in this
23 chapter shall be construed to discourage employers from adopting or
24 retaining leave policies more generous than any policies that comply
25 with the requirements under this chapter.

26 NEW SECTION. **Sec. 20.** A new section is added to chapter 49.78 RCW
27 to read as follows:

28 (1) Leave under this chapter and leave under the federal family and
29 medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6)
30 is in addition to any leave for sickness or temporary disability
31 because of pregnancy or childbirth.

32 (2) Leave taken under this chapter must be taken concurrently with
33 any leave taken under the federal family and medical leave act of 1993
34 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 49.78 RCW
2 to read as follows:

3 RULE-MAKING AUTHORITY. The director shall adopt rules as necessary
4 to implement this chapter.

5 NEW SECTION. **Sec. 22.** A new section is added to chapter 49.78 RCW
6 to read as follows:

7 CONSTRUCTION. This chapter must be construed to the extent
8 possible in a manner that is consistent with similar provisions, if
9 any, of the federal family and medical leave act of 1993 (Act Feb. 5,
10 1993, P.L. 103-3, 107 Stat. 6), and that gives consideration to the
11 rules, precedents, and practices of the federal department of labor
12 relevant to the federal act.

13 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 49.78.005 (Administration and enforcement of this chapter
16 to cease while federal family and medical leave act provides the same
17 or more family leave--Rights under RCW 49.78.070(1)(b) preserved--
18 Enforcement) and 1997 c 16 s 1;

19 (2) RCW 49.78.030 (Requirements--Limitation) and 1989 1st ex.s. c
20 11 s 3;

21 (3) RCW 49.78.040 (Notice to employer) and 1989 1st ex.s. c 11 s 4;

22 (4) RCW 49.78.050 (Requirements for confirmation--Second opinion)
23 and 1989 1st ex.s. c 11 s 5;

24 (5) RCW 49.78.060 (Both parents with same employer) and 1989 1st
25 ex.s. c 11 s 6;

26 (6) RCW 49.78.070 (Employee employment rights--Limitations) and
27 1989 1st ex.s. c 11 s 7;

28 (7) RCW 49.78.080 (Employee benefits) and 1989 1st ex.s. c 11 s 8;

29 (8) RCW 49.78.100 (Additional rights--Remedies) and 1989 1st ex.s.
30 c 11 s 10;

31 (9) RCW 49.78.110 (Collective bargaining agreements--Obligations
32 and rights not diminished) and 1989 1st ex.s. c 11 s 11;

33 (10) RCW 49.78.120 (Collective bargaining agreements--Application
34 of chapter--Grievance procedures) and 1989 1st ex.s. c 11 s 12;

35 (11) RCW 49.78.130 (Discrimination prohibited) and 1989 1st ex.s.
36 c 11 s 13;

1 (12) RCW 49.78.140 (Complaint--Contents--Notice--Investigation) and
2 1989 1st ex.s. c 11 s 14;

3 (13) RCW 49.78.150 (Notice of infraction--Contents) and 1989 1st
4 ex.s. c 11 s 15;

5 (14) RCW 49.78.160 (Notice of infraction--Service) and 1989 1st
6 ex.s. c 11 s 16;

7 (15) RCW 49.78.170 (Notice of infraction--State agencies) and 1989
8 1st ex.s. c 11 s 17;

9 (16) RCW 49.78.180 (Appeal--Hearings--Decisions--Review--Appeal of
10 final decision) and 1989 1st ex.s. c 11 s 18;

11 (17) RCW 49.78.190 (Penalties) and 1989 1st ex.s. c 11 s 19; and

12 (18) RCW 49.78.200 (Poster required) and 1989 1st ex.s. c 11 s 20.

13 NEW SECTION. **Sec. 24.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 25.** Captions used in this act are not any part
18 of the law.

--- END ---